***THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

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+ WRIT PETITION No. 4185 of 1995

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%Dated 3.11.2005

1. K.S.Sanjeeva Rao and two others

…….. Petitioners

$ 1.The District Tribal Welfare Officer,

Khammam at Bhadrachalam and another

…… Respondents

! Counsel for Petitioners : Sri M.Rajamalla Reddy

^ Counsel for Respondents: G.P. for Social Welfare

< GIST:

> HEAD NOTE:

? Cases referred

(1998) 7 SCC 84

[2] (2002) 10 SCC 580

[3] AIR 1963 SC 375

[4] AIR 1964 SC 719

[5] (1993) 4 SCC 727

[6] AIR 1976 SC 1080

[7] (1991) 2 SCC 716

[8] AIR 1977 SC 1512

[9] AIR 1982 SC 673

[10] (1984) 1 SCC 43

[11](1997) 5 SCC 341

[12](2004)1 SCC 64

[13]AIR 1991 SC 1260

[14]AIR 1974 SC 555

[15]AIR 1964 SC 471

[16](1996)3 SCC 364

[17](1994) 2 SCC 481

[18]2004(5) ALD 180 (DB)

[19](2002) 1 SCC 100

[20]AIR 1955 S.C.425

[21]AIR 1987 SC 2235

[22]AIR 1987 SC 1972

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.4185 OF 1995

ORDER:

Proceedings of the first respondent dated 3.2.1995, whereby the petitioner was dismissed from service, is the subject matter of challenge in this writ petition.

Facts, to the extent necessary for this writ petition, are that the petitioner was appointed on 19.06.1982 as an SGBT Teacher in the Ashram School and was later promoted as Head Master. Ashram Schools are run by the Integrated Tribal Development Agency, (for short "ITDA"), a Society, constituted by the Government of Andhra Pradesh, for the development of socio-economic interests of Tribals. The expenditure of the Society is met by the Government of India and the Government of Andhra Pradesh, it is run by Government officials, funded and supervised by the Government of India. Institutions meant for Tribals, in the scheduled areas, are under the control of the ITDA, a "State" within the meaning of Article 12 of the Constitution of India.

While working as the Head Master of Ashram School, Kolleru, the petitioner was issued a charge sheet on 31.3.1992, and the charges, stated below, were framed against him:

"Charge No.1.

Sri K.S. Sanjeeva Rao, H.M.A.S. Kalleru, had been misbehaving with and harassing the tribal girl students of the Ashram school, Kalleru, for the last few weeks. He used to enter the hostel rooms during the nights and lying on the beds of Kum. T.Lalamma, Kum.Madakam Radhamma, Kum.Karam Lakshmi and Kum. Karam Kannamma, used to bite their cheeks, press breasts, and caress their private parts. He used to threaten them that they would be removed from the hostel, if they reveal these facts to anybody. However, when Sri Madakam Venkaiah, President, M.P.P. Chintoor, having came to know of these facts, questioned Sri K.S.S. Rao, he had confessed before the President, M.P.P. Chintoor that it was a mistake on his part and promised to behave with the students properly in future. But Sri K.S.S. Rao, H.M., failed to keep his promise and continued to misbehave with the girl students as usual.

On 28.02.1992 at 9.00 P.M., Sri K.S.S.Rao, H.M. A.S. Kalleru called Kum. T.Lalamma to his residential quarters and asked her to cook food for him. Accordingly, Kum. T.Lalamma, cooked food. After finishing cooking and while Kum. T.Lalamma was returning to her hostel room, Sri K.S.S. Rao, H.M. pulled her, bitten her cheeks, pressed her breasts and forced to be with him. However, Kum. T.Lalamma, managed to get herself released from the hold of Sri K.S.S. Rao and ran out of the A.S. hostel, reached her native village – Yerrampet, the same night and narrated the incident to her parents. This gruesome incident has naturally so much frightened her that she is reluctant to return to A.S. Kalleru and continue her studies.

The behavour of Sri K.S.S. Rao, H.M. is most heinous and quite unbecoming of a teacher, under whose care small, innocent tribal girls and boys have been placed. It has been thoroughly demoralized the students and eroded the confidence of the tribal parents in the administration of the Ashram school, Kalleru.

Charge No.2

Sri K.S.S. Rao, H.M. A.S. Kalleru, used to consume alcohol day in and day-out, totally neglected the education of the students, forced the hostel students to attend to his domestic chores and misappropriated the rice and other essential commodities of the hostel meant for the students. Added to all this, he used to behave with the girls in a most indecent and reprehensible manner. The result: A lot of mental agony for and physical torture and emaciation of the small children. The school children are scared so much that many of them like Kumari T.Lalamma, Kum. Madakam Radhamma, Kum. Karam Kannamma and Kum. Karam Lakshmi left the Ashram school, Kalleru and discontinued their studies.

Sri K.S.S. Rao as the Head Master/Guardian is expected to look after the education and general well being of the tribal children under his custody, in violation of most elementary norms had committed crimes against the helpless children and is responsible for undermining the future of many tribal children."

An enquiry Officer was appointed, an enquiry held and on receipt of the enquiry report, a show cause notice was issued to the petitioner on 16-11-1994 communicating the gist of the findings of the Enquiry Officer on each charge, to which the petitioner submitted his explanation on 7.12.1994. The District Tribal Welfare Officer, vide proceedings dated 03.02.1995, held that, teachers are by custom and convention are regarded as a third parent, society cannot take a lenient view of moral lapses of teachers that too a Headmaster of an Ashram School in a Tribal area and if persons like the petitioner were allowed to continue he would end up doing more harm and damage to tribal schools in particular and society in general. Since the charges held proved against the petitioner were serious in nature, punishment of dismissal from service was imposed on him, by the District Tribal Welfare Officer, vide proceedings dated 03.02.1995. Hence this writ petition.

During the pendency of this writ petition, the petitioner died on 21.10.2003 and, by order in W.P.M.P.No. 17042 of 2005 dated 05.09.2005, his wife and son were brought on record as his legal representatives.

It is stated, in the affidavit filed in support of the writ petition, that the allegations in the charge sheet are made at the instance of one Sri Madakam Venkaiah, the then President of the Mandal Praja Parishad, Chinttoor and that the enquiry proceedings are null and void and without jurisdiction. It is contended that, no witnesses were examined in the presence of the petitioner in the domestic enquiry, the statements of witnesses were not recorded in his presence and that he was not given an

opportunity to cross-examine them. On behalf of the petitioner, his statement, the statement of his wife Smt.R.Hemalatha and two Teachers, who were working at that time in the Ahsram School, Kolleru viz., Sri J.Lalaiah and Sri P.Anantharamulu, were recorded by the Mandal Development Officer (Enquiry Officer).

With regards the allegations, in the charge sheet, that the petitioner misbehaved with a girl student by name Kum.T.Lalamma and harassed her in the Ashram School on 28.2.1992 at 9.00 p.m, the petitioner contends that on 27.2.1992 itself Kum.T.Lalamma had left the school for her native place along with her sister and she was not in the school on 28.2.1992. The police complaint lodged on 03.03.1992, by Kum.T. Lalamma, at Chintoor Police Station, is alleged by the petitioner to be at the instance of the Mandal President Sri Madakam Venkaiah. The petitioner contended that, he never misbehaved with girl students of the Ashram School or entered Hostel rooms during night hours, that he was a married man, his wife R.Hemalatha was also a teacher working in the same school, they were living together in the residential quarters attached to the Ashram School, on the night of 28.2.1992 the petitioner's wife was with him and there was no need for him to call Kum.T. Lalamma or to commit the alleged acts. It is stated that the other two Teachers, Sri J.Lalaiah and Sri P.Anantha Ramulu were residing near the residential quarters of the petitioner and were also present on the night of 28.2.1992, that while the petitioner was initially imposed fine by the learned Mandal Magistrate and the said order was set aside by the Sessions Judge at Khammam in Crl.Appeal No.24 of 1992, the matter was remitted to the Mandal Magistrate and that the matter was pending. The allegation of consumption of alcohol, during day time, is denied and it is stated that the enquiry report was not furnished to him.

In his counter affidavit, the 1st respondent would submit that, the office of the District Tribal Welfare Officer is under the control of the Government, the office was established in the year 1973 to ground welfare schemes of Tribals, as per G.O.Ms.No.515 SW(M) Department, dated 25.05.1976, the appointing authority, for the posts of Secondary Grade Teachers in Tribal Welfare Institutions, is the District Tribal Welfare Officer, the expenditure of the Ashram Schools are being met from the funds released by the State Government, the authority which may impose on a member of subordinate services the penalties, specified in clauses (ii), (v) to (ix) of Rule 9, is the appointing authority and that action was taken against the petitioner according to rules. Reference is made to the report of the Enquiry Officer and it is

stated that the Enquiry report revealed that Kum.T. Lalamma, a student of 4th standard, aged about 12 years, had leveled serious charges of misbehavour against the Head Master (petitioner), that such serious charges of misbehaviour would not have been made but for some traumatic experiences in the hostel and that Kum. T. Lalamma had specifically stated that she bore no grudge or animosity against the petitioner. The evidence of Smt R. Hemalatha, wife of the petitioner and two other school teachers, who had deposed in favour of the petitioner, was disbelieved by the Enquiry Officer as the two teachers were found to be obligated to the petitioner.

While the statement of the petitioner was recorded by the Enquiry Officer on 24.04.1992, the statement of Smt. R. Hemalatha and J. Lalayya, examined as witnesses on behalf of the petitioner, were recorded on 22.04.1992 and that of Sri P. Anantha Ramulu, another witness on behalf of the petitioner, was recorded on 24.04.1992. The statement of Kum. T. Lalamma (the victim) was recorded on 05.05.1992 and that of the President, Mandal Praja Parishad, Chinthuru was recorded on 06.05.1992. While the petitioner and his wife denied the allegation of misconduct, the other two teachers stated that they could not categorically state whether the allegation of misbehaviour leveled against the petitioner was true or not.

With regards the second charge of misuse or misappropriation of essential commodities, reference is made by the Enquiry Officer to the evidence of Smt. R. Hemalatha, wife of the petitioner, who admitted that on one occasion, when rice was not available at Kunta village, she had utilized 3 Kgs of hostel rice for the requirements of her family. The Enquiry Officer held that both Sri J. Lalaiah and Sri P. Anantha Ramulu were regularly dining in the hostel which was an irregularity, that since the petitioner was addicted to heavy drinking during night, he had entrusted supervision of the night study of the children to two teachers, that the petitioner himself did not supervise at any time, that not a single class was being conducted at 10.30 AM, that all the teachers, including the petitioner, were at their residential quarters and that the children were wandering in the school premises.

The Enquiry Officer, vide proceedings Rc.No.A/334/Susp/92, dated 03.02.1995, forwarded his report and proceedings of the enquiry to the Project Officer, ITDA. The findings recorded by the Enquiry Officer, in respect of the first charge, is as follows:

“A close perusal of the reply/evidence given by Sri KSS Rao, H.M (u/suspension), his wife

Smt. R.Hemalatha, SriJ.Lalaiah and Sri P.Ananta Ramulu – both teachers examined as witnesses on behalf of the H.M. Sri K.S.S.Rao, complainant Kum.T.Lalamma and the President, MPP, Sri Madakam Venkaiah reveal that:-

Kum.T.Lalamma, a student of 4th standard, brought the misbehaviour of Sri K.S.S.Rao, H.M. with herself and other girl students to the notice of the President, M.P.P in the first instance. The President, MPP, visited the Ashram School, Kalleru twice. During his second visit, the President, MPP questioned the H.M. Sri K.S.S.Rao about the allegations of misbehaviour with the girl students and mismanagement of school affairs and advised him to behave properly with girl students in future and rectify the defects in managing school affairs. However, Sri K.S.S.Rao, H.M. did not keep his promise and continued misbehaving with the girl students as usual.

Sri K.S.S.Rao, H.M. denied the allegation of misbehaviour and stated that he is married man and is living with his wife in the residential quarters attached to the Ashram school. His wife Smt. R.Hemalatha also denied the allegation of misbehaviour of her husband with hostel girl students during nights, as she and her husband live together in the residential quarters attached to the school.

Sri J.Lalaiah and Sri P.Anantaramulu – teachers who gave evidence on behalf of Sri K.S.S. Rao, stated that they could not say categorically whether the allegation of misbehaviour leveled against Sri K.S.S.Rao is true or not.

In this connection, the important point to be considered is as to why Kum. T.Lalamma – a student of 4th standard and aged about 12 years, leveled the serious charge of misbehaviour against the H.M. himself at all, unless she had had some traumatic experiences in the hostel; she said that she had no grudge or animosity against the H.M. Under the ordinary circumstances, no girl students, Kum.T.Lalamma, being no exception, would have levelled the allegation of misbehaviour against the H.M. and in the process, risked her studies and invited unnecessary complications. On his part, the H.M. Sri K.S.S. Rao, was also not in a position to cite any particular reason, for Kum.T.Lalamma leveling the charge of misbehaviour except saying that the villagers or some local politicians (whom Sri k.S.S.Rao did not identify) have incited her. These days one often comes across with instances of allegations of various kinds leveled against the H.Ms./Wardens but instances of allegations of misbehaviour with girl students are very rare.

The contention of Sri K.S.S.Rao, H.M. that he is a married man and the contention of his teacher – wife Smt.R.Hemalata, that there is no need for Sri K.S.S.Rao to misbehave with girl students during nights, because, she and her husband live together, may be correct in the case of a responsible and sensible person who has some regard for atleast the most elementary norms of character and conduct. Sri K.S.S.Rao, H.M. is not known to be a respector of such elementary norms of life. He is addicted to heavy drinking during night times and inspite of his wife living with him, it was quite likely that he would enter the hostel rooms of the girl students in a state of drunkenness and misbehave with them.

As for the allegation of misbehaviour with Kum.T.Lalamma on the night of 28.2.92, Sri K.S.S.Rao, in his written reply dated 10.4.92 denied that he had misbehaved with Kum.T.Lalamma on 28.2.92 at 9.00 p.m. and stated that Kum.T.Lalamma was forced to

give complaint against him by the local politicians. Significantly, however, during the person hearing, on 24.4.92, Sri K.S.S.Rao, made an about-turn and stated that Kum.T.Lalamma was not in the hostel on 28.2.92 and that she was taken away from the school by her sister the previous day and therefore it is not true to say that he misbehaved with Kum.T.Lalamma on 28.2.92. His wife Smt.R.Hemalata, dutifully supported the version of Sri K.S.S.Rao that Kum.T.Lalamma was not in the hostel on 28.2.92. Sri J.Lalaiah and Sri P.Ananta Ramulu – two teachers of the Ashram School, Kalleru, who appeared to be under certain obligations, also echoed the statement of Sri K.S.S.Rao, that Kum.T.Lalamma was taken away from the school by her sister on 27.2.92 itself and that she was not in the hostel on 28.2.92.

The above statement of Sri K.S.S.Rao, H.M, his wife Smt. R.Hemalata and the two teachers is nothing but a concocted story and an after thought trotted out to absolve Sri K.S.S.Rao from the charge of misbehaviour. If Kum.T.Lalamma was actually taken away from the school on 27.2.92 itself by her sister, and if she was not in the hostel on 28.2.92, Sri K.S.S.Rao, would definitely have made a mention of this crucial point in his written statement dated 10.4.92. That he did not on 10.4.92 and did so only on 24.4.92 i.e., after a fortnight, speaks for itself and exposes the real idea.

Kum. T.Lalamma filed a complaint in the Police Station, Chintoor, four days after the incident of misbehaviour on 28.2.92. She stated that she could not file the complaint in the Police Station immediately, because she wished to bring the incident to the notice of the President, MPP in the first instance and was in search of the President and it was after four days that she could contact him and narrated the details of the incident of 28.2.92 to him and then filed a complaint in the police station, Chintoor. The Prsident, MPP had also stated that Kum.T.Lalamma could not meet him for about four days because he was not available at Chintoor and that when she met him after four days, she narrated the facts of the incident dt.28.2.92 to him and that he advised her to file a complaint in the police station.

Under the circumstances, I do not find any reason to disbelieve that the HM. Sri K.S.S.Rao had been misbehaving with and harassing the tribal girl students of the A.S.Kalleru and that he had misbehaved with Kum.T.Lalamma on the night of 28.2.92, and as a result of this frightening experience, Kum.T.Lalamma on the night of 28.2.92 left the Ashram School, Kalleru and discontinued her studies. The behaviour of Sri K.S.S.Rao, H.M. is most heinous and quite unbecoming of a H.M. It has eroded the confidence of tribal parents in the administration of the Ashram School, Kalleru.

Also, it may not be out of place to mention here that on the complaint filed by Kum.T.Lalamma in the Police Station, Chintoor, and the S.I. of Police, Chintoor, filing charge sheet against Sri K.S.S.Rao, H.M (u/s) under Section 354 IPC, the Mandal Magistrate, Chintoor, framed the charge of misbehaviour against Sri K.S.S.Rao, H.M. and on admission of his guilt, Sri K.S.S.Rao, was convicted and sentenced to pay a fine of Rs.300/- and in default of payment of fine, he should undergo simple imprisonment for a period of 3 months, under Clause-A of Sec.251 Cr.P.C. Sri K.S.S.Rao, H.M. now says that he was forced to admit the offence under duress and undue influence by the police which resulted in his being fined Rs.300/- by the Mandal Magistrate, Chintoor. However, it is altogether a different issue”

On receipt of the enquiry report, a show cause notice was issued, calling upon the petitioner to show cause as to why punishment should not be imposed upon him. Gist of the findings of the enquiry officer was enclosed along with the show cause notice. On receipt of his reply thereto, action was taken under Rule 9 of the C.C.A. Rules, 1991 and the petitioner was dismissed from service, vide proceedings Rc.No.A/334/Susp/92, dated 03.02.1995 of the District Tribal Welfare Officer, Bhadrachalam.

While several contentions are raised in the writ petition Sri M.Raja Malla Reddy, learned counsel for the petitioner, would limit his contentions to the grounds that the enquiry proceedings were held in violation of principles of natural justice. Learned counsel would submit that the statements of prosecution witnesses, recorded behind the petitioner's back and without the petitioner being given an opportunity to cross-examine the witnesses, were taken into consideration in holding the petitioner guilty of the charges. Learned counsel would submit that a copy of the enquiry officer's report was not furnished, as a result of which, the petitioner was denied the opportunity of submitting his objections to the findings of the Enquiry Officer. Learned counsel would rely on **Punjab National Bank v. Kunj Behari Misra** and **Ajit Jain v. National Insurance Co. Ltd,** in this regard.

Learned Government Pleader would submit that principles of natural justice cannot be placed in a straight jacket formula, that the findings of the Enquiry Officer disbelieving the evidence of the petitioner and in accepting the evidence of the victim girl was neither perverse nor was it based on no evidence and did not warrant interference of this Court under Article 226 of the Constitution of India. Learned Government Pleader would submit that child molestation was a heinous crime and since the petitioner, a headmaster on whom lay the responsibility of protecting the girl inmates of the hostel, had indulged in this unpardonable crime, the punishment of dismissal from service was legal and valid.

It is well settled that domestic enquiries, conducted by Employers, must be fair and just and in bringing home to the employee the charges framed against him, principles of natural justice must be observed. Normally, evidence on which charges are sought to be proved, must be laid at such an enquiry in the presence of the employee, an opportunity given to the employee to cross examine the witness and

on completion of the departmental enquiry and on submission of the report of the enquiry officer, a copy thereof is required to be furnished (**State of Mysore Vs. Shivabasappa; Khardah and Co. Ltd Vs. The Workmen)**.

In **Kunj Behari Misra,** (1 supra), following the earlier Constitution Bench decision in **Managing Director, ECIL, Hyderabad Vs. B. Karunakar ,** it was held that principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the Enquiry Officer holds the charges to be proved then the report has to be given to the delinquent officer to enable him to make a representation, before the disciplinary authority takes further action which may be prejudicial to the delinquent officer.

In **Ajit Jain** (2 supra) the Supreme Court held that as a result of an infirmity that has crept in the departmental proceedings, the order inflicting punishment would be vitiated and the Court would be required to set aside the order and direct that the Enquiry Proceedings be relegated to the stage where the infirmity had already crept in.

It is not in dispute that in the present case while the statement of the victim and that of the President, Mandal Praja Parishad were recorded, their evidence was not subjected to cross examination by the petitioner, and while the gist of the findings of the Enquiry Officer was given, a copy of the full enquiry report was not furnished.

In the face of such serious charges of child molestation leveled, against the petitioner, by the victim, a 12 years old tribal girl student, who has given a graphic account of the heinous incident, would the order of punishment of dismissal from service require to be set aside on the ground of violation of principles of natural justice?

Departmental proceedings, as is well settled, do not stand on the same footing as a criminal prosecution in which the degree of proof required is of a very high order. Strict rules of Evidence Act and standard of proof envisaged therein do not apply to departmental proceedings. It is open to the authorities to receive and place on record all necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. The standard of proof, in departmental enquiries, is not proof beyond reasonable doubt but the preponderance of probabilities tending to draw an inference that the fact must be more probable. The Probative value of the

evidence can be guaged from the facts and circumstances in a given case. (**K.L.Shinde Vs. State of Mysore; Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S.Gandhi:**). All materials which are logically probative for a prudent mind are permissible in a domestic enquiry and there is no allergy to hearsay evidence provided it has reasonable nexus and credibility. For the purpose of a departmental enquiry complaint, certainly not frivolous, but substantiated by circumstantial evidence, is enough. (**State of Haryana Vs. Rattan Singh; J.D.Jain Vs. State Bank of India**) The question whether a delinquent was afforded a reasonable opportunity of effectively defending himself is a question of fact depending on the circumstances of each case and no hard and fast rule can be laid in this regard. (**K.L.Shinde – 6 supra**).

While providing the petitioner, an opportunity to cross-examine the witnesses, examined on behalf of the Management, would have been in accordance with the rules and in compliance with principles of natural justice, would denial thereof vitiate the enquiry and the order of punishment is the question which arises for consideration.

While the petitioner had asked for a departmental enquiry to be conducted in respect of the charges leveled against him, there was no specific request to cross examine witnesses. Whether a particular principle of natural justice has been violated or not has to be judged in the back ground of the nature of charges, the nature of the investigation conducted etc. The basic concept is fair play in action, administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross examination may well from part of fair play in action. Where the party against whom an order is passed does not demand to test the veracity of the version or the credibility of the statement, no prejudice can be said to have been caused, absence of an opportunity of cross examination *per se* would not invalidate or vitiate the decision arrived at fairly. (**K.L.Thripathi Vs. State Bank of India**)

It is true, unlike in **K.L.Thripati** (10 supra), the petitioner herein denied that he had molested the victim. Would such denial necessitate disbelieving the evidence of a 12 years old tribal girl, who has given a graphic account of the acts of molestation,

only on the ground that she was not subjected to cross examination?

On 05.05.1992, in the presence of Enquiry Officer, the child victim Kum. T.Lalamma deposed thus:

"I have been studying from 1st Class onwards in the Ashram School itself at Kolluru. Right from the beginning I have been staying in the Hostel attached to the said School. Mr. K.S. Sanjeeva Rao is the Head Master of Ashram School. His wife Smt. Hemalatha is also working as teacher in the very same school. The remaining two teachers of the School namely Sri J.Lalayya and P.Anantha Ramulu are residing in one of the quarters attached to the said school. They both used to take their meals from of the meals prepared for School students residing in the hostel.

Head Master Sri K.S. Sanjeeva Rao used to teach General Science subject for the 5th Class students. I submit that I did not lag behind studies than other students. I used to get quite good marks in the examinations. The Head Master Sri K.S. Sanjeeva Rao used to beat me demanding to speak out loudly while giving replies to the questions put by him. I did not bear any grudge or have anger against the Head Master. Every day we used to study in the Ashram School upto 9.00 Pm or 9.30 P.m. Our Teachers either J. Lalaiah or P. Anantha Ramulu used to supervise our studies. After completing our studies, when we returned to our hostel room, the supervising teachers would go to their respective rooms located by the side of the hostel.

The fact that our Head Master Sri K.S. Sanjeeva Rao come to our Hostel room at Night time and molested me and other girls physically and harassing in many ways is true. He used to threaten us always by saying that if we happen to disclose this matter to anybody he would strike off our names. I submit that Mandal President Sri Madakam Venkayya came twice to our school. Once at 11.00 Am when he visited our school and sent for the Head Master SanjeevaRao, then his wife replied that he did not wake up from sleep and that there is no possibility of his getting up from the sleep at present. Thereupon Sri Madakam Venkayya returned and went away. When he paid visit to our school for the second time, he told the Head Master in the presence of children not to misbehave with children. Upon that the Head Master gave word to the President Sri Madakam Venkayya that he would behave properly from here after. But I submit that Sri K. Sanjeeva Rao did not change his behaviour and attitude towards me and other girl students and used to molest us physically by biting our cheeks and press our breasts and do other type of acts.

I have got one elder sister by name Tokala Durgamma. On 27.02.1992 she came to see me and stayed in the hostel for some time along with me and went away. It is not true to say that on 27.02.1992 my elder sister took me along with her to our home from the school on the pretext of getting clothes stitched for me. In this content, the statements made by the Head Master and Sri J.Balayya and Sri P.Anantha Ramulu to the effect that on 27.02.1992 itself my elder sister had taken me away from the school is utterly false. I submit that on 28.02.1992 I was very much present in the hostel itself. When Head Master's wife was away from the house, the Head Master called and asked me to cook food. After cooking food while I was returning to our hostel, he pulled me by holding my hand. He bit my cheeks and caught hold of my breasts. I got myself released from him and came away to our

house on the very same night. When my mother questioned me as to why I came away from the school, then I disclosed this matter to my parents. When we tried to reveal this matter to the Mandal President Sri Madakam Venkayya, we could not find him. About four later when we found the president, I have narrated the above matter to him. I lodged a complaint in the Police Station also.

I submit that the Head Master Sri K.S.Sanjeeva Rao is not in the habit of consuming liquors during day time, while discharging duties. He is in the habit of consuming liquor at night time. Then only he would resort to assault upon us.

Sri K.S. Sanjeeva Rao has got one maid servant. She used to clean utensils etc., in the morning and after fully filling (vessals) with waters she would go away. After her departure for washing clothes and for doing other odd duties they used to take services of the Hostel children. I submit that eatable items like rice, oil, vegetables etc., which are meant for the benefit of hostel children are being taken away daily by the Head Master for his personal use. Even though we children and cooks had noticed the same we are unable to say anything. Apart from that both the school teachers (namely J. Lalayya and P. Anantha Ramulu) used to have their meals in the hostel itself.

I submit that since the happening of the above incident on 28.02.1992 till the school is closed for Summer Vacation, I did not go to the school. I have remained with my parents only. Twice the school watchman came to our house for asking me to come to the school. Even after placing Sri K.S. Sanjeeva Rao under suspension from service, as his wife is still staying along with him, and with an intention that I would not have proper personal protection from them, I refrained from going to school. I submit that along with me Karam Lakshmi also is not going to school. I submit that on account of this incident, great interruption has been caused to our studies."

With regards the credibility of testimony of a child witness, even in criminal cases, in **Dattu Rama Rao Sakhare Vs. State of Maharashtra,** the Supreme Court held that the only precaution which the court should bear in mind, while assessing the evidence of a child witness, is that the witness must be a reliable one, her demeanor must be like any other competent witness, there is no likelihood of her being tutored, and that there is no rule or practice that in every case the evidence of such a witness must be corroborated. Similarly in **Ratansingh Dalsukhbhai Nayak Vs. State of Gujarat**, the Supreme Court held that if after careful scrutiny of a child witness, the Court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness.

When such is the situation in a criminal case, where the degree of proof required is proof beyond reasonable doubt unlike in domestic enquiries where preponderance of probabilities is the test, should the testimony of a tribal girl of a

tender age of 12 years be eschewed as it was not subjected to cross examination? The testimony of Lalamma has a ring of truth. No woman, much less a 12 years old tribal girl, would give such graphic details in her testimony, if it was not true. There can hardly be other witnesses for such incidents of molestation. When such acts of molestation take place in the confines of a room, where no other person is present, only two persons could have spoken about the incident, the offender and the victim. While the victim has deposed in graphic detail about the incident, the petitioner has denied the charge. While the petitioner, in the affidavit filed in support of the writ petition, would contend that he never used to consume alcohol, his wife Smt. R. Hemalatha, in her statement before the Enquiry Officer, deposed that the petitioner was used to drinking during night time. Both Sri J. Lalaiah and P. Anantharamulu, teachers, who were examined on behalf of the petitioner, in their evidence before the Enquiry Officer deposed that the petitioner was habituated to drink during nights. This incident of molestation is alleged to have taken place during night at 9.00 p.m. Both Sri J.Lalaiah and Sri P. Anantharamulu, in their statements recorded in the enquiry expressed their inability to state whether the allegation that the petitioner was misbehaving with girl students was true or not. The petitioner's contention that the victim Kum. T. Lalamma was taken away from the school on 27.02.1992 by her sister and that one was not in the hostel on 28.02.1992, was disbelieved by the Enquiry Officer and he held that the petitioner would definitely have made a mention of this crucial point in his written statement dated 10.04.1992 speaks for itself and since he did not do so on 10.04.1992 and did so only after a fort night on 24.04.1992 speaks for itself and exposes the real idea. Since the degree of proof required in domestic enquiries is preponderance of probabilities, it cannot be said to be improbable that the incident as alleged took place more so when no motives are attributed to the tribal girl who has given a graphic account of the incident concerned. In his written statement dated 10.04.1992, the petitioner stated that the alleged episode of 28.02.1992 was invented and stage managed by some local politicians, (whom he did not identify), who were inimically disposed towards him and that Kum. T. Lalamma was forced to gave a complaint against him by the very same persons. In his deposition on 24.04.1992, the petitioner was at a loss to explain as to why the allegation that he was misbehaving with girl students was leveled against him and stated that it was probably due to villagers developing grudge against him for not supplying hostel rice to them as and when; they demanded. For the first time before this Court the petitioner stated that it was at the

instance of the Mandal President, who was inimically disposed towards him, that these allegations were made against him. This allegation of malice raised; for the first time before this Court cannot be accepted. The petitioner has chosen not to implead the Mandal President as a respondent in the writ petition. It is well settled that the person against whom malice is alleged has to be made a party eo-nominee (**State of Bihar Vs. P.P.Sharma**). Allegations of malice are easily made than proved and the degree of proof required to establish malice is if a very high order. (**E.P. Royappa Vs. State of Tamilnadu**)

The Enquiry Officer held that unless she had a traverse …..experience in the hostel, a student of 4th standard and aged about 12 years would not level allegations of misbehaviour against the Headmaster himself and in the process risked her studies and invite unnecessary complications. The findings of the Enquiry Officer, cannot be said to be either perverse or based on no evidence. It is well settled that this Court, in exercise of its certiorari jurisdiction under Article 226 of the Constitution of India neither sits in appeal nor would it substantiate its views for that of the domestic tribunal.(**Syed Yadoob Vs. K.S.Radhakrishnan**)

Failure to comply with the procedural rules, requiring an opportunity to be provided to cross examine witnesses, has to be examined from the point of view of prejudice caused thereby to a delinquent employee. In **State Bank of Patiala Vs. S.K. Sharma**) the Supreme Court held that the object of principles of natural justice is to ensure that justice is done, that there is no failure of justice and that every person whose rights are going to be effected by the proposed action gets a fair hearing. The Supreme Court summarized the principles as under:-

> "……. In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under — "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that

there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things.……"

……..While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them……"

The petitioner has not even pleaded prejudice in this regard, in the affidavit filed by him in support of the writ petition. In the absence of a plea, let alone proof, of prejudice. Failure to give an opportunity to cross examine the child witness, in the peculiar facts of the present case, cannot be said to have caused prejudice, resulting in the enquiry and the order of punishment being vitiated.

It is well settled that a writ of mandamus and a writ of certiorari are discretionary unlike a writ of Habeas Corpus which can be sought as a matter of right. One of the principles inherent is that the exercise of discretionary power should be for the sake of justice and if quashing the order results in great harm to the society then the Court may restrain from exercising the power (**State of Maharashtra Vs. Prabhu**). It is well to remember that the jurisdiction of this Court under Article 226 of the Constitution of India being discretionary, a Writ is not issued as a matter of course. A writ of mandamus is not a writ of course or a writ of right but is, as a rule, discretionary **(C.R. Reddy Law College Employees' Association, Eluru, W.G.District Vs. Bar Council of India, New Delhi)**. The power under Article 226 of the Constitution of India need not be exercised in every case where there is an error of law. In the name of correcting errors of law, Courts ought not to bring forth a situation which would result in injustice and if justice became the by-product, of an erroneous view of law, Courts are not expected to erase such justice in the name of

correcting errors of law. (**Roshan Deen Vs. Preetilal**) One of the limitations imposed by this Court, on itself, is that it would not exercise jurisdiction unless substantial injustice has ensued or is likely to ensue. It would not allow itself to be turned into a court of appeal to set right mere errors of law which do not occasion injustice. **(Sangram Singh Vs. Election Tribunal, Kotah)**. Even if a legal flaw might be electronically detected, this Court would not interfere save manifest injustice or a substantial questions of public importance is involved. (**Rashpal Malhotra Vs. Mrs. Saya Rajput; Council of Scientific and Industrial Research Vs. K.G.S.Bhatt**).

Notwithstanding the forceful submissions of Sri M.Raja Malla Reddy, learned Counsel for the petitioner, I am not able to persuade myself that the deposition of Kum T. Lalamma, a 4th standard tribal girl student of 12 years, (wherein graphic details of her being molested by the petitioner are stated), is either tutored or is untrue. I am not inclined, in the peculiar facts of the present case, to exercise the discretionary jurisdiction of this Court under Article 226 of the Constitution of India in favour of the petitioner or to interfere either with the Enquiry Proceedings or the order of punishment.

Sri M. Raja Malla Reddy, learned Counsel for the petitioner, would plead equities and contend that since the petitioner is no more, his widow and son should no longer be subjected to the ordeal of having to face the ignominy or a slur on the petitioner's character. While the plight of the petitioner's widow and son may deserve sympathy, trauma which a 12 year tribal girl has undergone and the damage caused to her psyche on account of these incidents of molestation, can only be ignored at our peril. Would not, setting aside the order of punishment, on a technicality, result in manifest injustice to her? The answer can only be in the affirmative. I am of the firm view that justice has been done in imposing the punishment of dismissal on the petitioner. The impugned proceedings of the 1st respondent dated 03.02.1995 does not call for any interference.

The writ petition fails and is accordingly dismissed. There shall however be no order as to costs.

Date: 3.11.2005

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RAMESH RANGANATHAN, J

Note: L.R. copy to be marked

B/o

MRKR/ASP